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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

7 JOSEPH KELLY PARKS,

8 Plaintiff,

9 v.

10 COMMISSIONER OF SOCIAL SECURITY,

11 Defendant.

Case No. 2:14-cv-01331-BAT

**ORDER GRANTING PLAINTIFF'S
MOTION FOR 42 U.S.C. §406(b)
ATTORNEY FEES**

12 Plaintiff requests 42 U.S.C. §406(b) attorney fees in the net amount of \$1,504.25. Dkt. 27.

13 The Commissioner has no objection to Plaintiff's request and defers to the Court's assessment of
14 the matter. Dkt. 30.

15 Section 406(b) attorney fees are awarded to an attorney only after an award of past due
16 benefits has been made. The Court may determine and allow as part of its judgment a reasonable
17 fee for such representation, not in excess of 25% of the total of the past due benefits to which the
18 claimant is entitled by reason of such judgment. 42 U.S.C. §406(b)(1)(A). Plaintiff was awarded
19 \$30,017.00 in past due benefits. Dkt. 27, Exhibit A, Notice of Awards. Counsel is requesting a
20 §406(b) authorization in the gross amount of \$1,895.31, which is not in excess of 25% of the
21 total past due benefits received by Plaintiff ($\$30,017.00 \times 25\% = \$7,504.25$).
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1 Section 406(b) attorney fees are to be offset by EAJA fees paid to plaintiff's counsel, with
2 the attorney receiving the greater of the two awards and the plaintiff receiving the lesser of the
3 two awards. EAJA fees were awarded to Plaintiff's counsel in the amount of \$5,967.89. Dkt. 26.
4 The EAJA attorney fees were garnished for the payment of Plaintiff's student loans (in the
5 amount of \$5,576.83), and Plaintiff's counsel received \$391.06. Dkt. 27, Exhibit D, US
6 Department of Treasury. Therefore, counsel requests a §406(b) attorney fee award of \$1,895.31
7 less an offset of \$391.06, leaving a net §406(b) fee of \$1,504.25.¹

8 The Court finds that this amount is reasonable.

9 Accordingly, it is **ORDERED** that §406(b) attorney fees are awarded to Plaintiff's counsel,
10 D. James Tree, in the amount of \$1,504.25 (\$1,895.31 less an offset to plaintiff of \$391.06 for
11 previously paid EAJA fees).

12 DATED this 10th day of September, 2018.

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15 BRIAN A. TSUCHIDA
16 Chief United States Magistrate Judge
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20 ¹ Counsel also received §406(a) attorney fees in the amount of \$6,000.00. Section 406(a) fees are
21 not capped at 25% of a claimant's past due benefits, but they must be reasonable and approved
22 by the Social Security Administration. An attorney can receive both §406(a) and EAJA fees or
23 both §406(a) and §406(b) fees with an offset for EAJA fees received. There is an offset between
§406(b) and EAJA fees as both fees are awarded for work performed before the Federal Court
but there is no offset between §406(a) and EAJA fees as the work is not considered duplicative,
i.e., administrative vs. federal court work.